

**FILED**

**FEB 04 2008**

PATRICK E. DUFFY, CLERK  
By \_\_\_\_\_  
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

|                          |   |                    |
|--------------------------|---|--------------------|
| JOSEPH OQUENDO SALADINO, | ) | CV 08-03-M-DWM-JCL |
|                          | ) |                    |
| Petitioner,              | ) |                    |
|                          | ) |                    |
| vs.                      | ) | ORDER              |
|                          | ) |                    |
| UNITED STATES, et al.,   | ) |                    |
|                          | ) |                    |
| Respondents.             | ) |                    |
| _____                    | ) |                    |


Petitioner Saladino has filed an application for a writ of habeas corpus on January 4, 2008. United States Magistrate Judge Jeremiah C. Lynch examined the Petition and determined that Petitioner lacks standing to proceed under the habeas statute because he is not "in custody." See 28 U.S.C. § 2241(c)(1)-(4). On that basis, Judge Lynch issued Findings and Recommendations in which he recommends that the Petition be dismissed for lack of subject-matter jurisdiction, that any pending motions be denied, and that a certificate of appealability be denied.

The Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED for lack of subject-matter jurisdiction, Petitioner's motion for leave to file (Doc. No. 2) is DENIED, and a certificate of appealability is DENIED. The Clerk of Court is directed to close the case file and enter a judgment of dismissal.

DATED this 4<sup>th</sup> day of February, 2008.

  
\_\_\_\_\_  
DONALD W. MOLLOY, DISTRICT JUDGE  
UNITED STATES DISTRICT COURT

